

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
(EASTERN DIVISION)**

In re:

COSI, INC., *et al.*,¹

Debtors.

**Chapter 11
Case No. 16-13704-MSH**

(Jointly Administered)

**ORDER (I) AUTHORIZING USE OF CASH COLLATERAL,
(II) GRANTING ADEQUATE PROTECTION, AND
(III) SCHEDULING A HEARING ON FURTHER USE OF CASH COLLATERAL**

Upon the Motion for Entry of an Order (I) Authorizing Use of Cash Collateral, (II) Granting Adequate Protection, (III) Scheduling a Hearing on Further Use of Cash Collateral, and (IV) Granting Related Relief (the “Cash Collateral Motion”) filed by Cosi, Inc. on behalf of itself and affiliated debtors and debtors-in-possession (the “Debtors”) on September 28, 2016; and notice of the Cash Collateral Motion being good and sufficient notice; the Court finding that the Cash Collateral Motion is in the best interest of the Debtors’ estate; and no objection to the Cash Collateral Motion having been filed or any such objection having been withdrawn or overruled; the Court finds as follows:

1. On September 28, 2016 (the “Petition Date”), the Debtors filed voluntary petitions for relief pursuant to Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101 et seq. (the “Bankruptcy Code”).

¹ The Debtors in these chapter 11 cases, along with the last four digits of the federal tax identification number for each of the Debtors, are Cosi, Inc. (3745) (“Cosi”) and its subsidiaries, Xando Cosi of Maryland, Inc. (2196) (“Xando”), Cosi Sandwich Bar, Inc. (0910) (“CSB”), Hearthstone Associates, LLC (6267) (“HALLC”), and Hearthstone Partners, LLC (9433) (“HPLLC”; collectively with Xando, CSB, and HALLC, the “Subsidiaries”). The Debtors’ corporate offices are located at 294 Washington Street, Suite 510, Boston, MA 02108.

2. Since the Petition Date, the Debtors have continued in the management of their business and to manage their property as debtors-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108. No official committee of unsecured creditors, trustee, or examiner has been appointed herein.

3. The Debtors require the use of cash collateral in order to preserve their operations and the value of their assets. The relief granted in this Order is in the best interests of the Debtors, their estate, and their creditors.

4. The following creditors may have liens against the Debtor's personal property, including its cash and accounts receivable: (a) Milfam II LP, (b) AB Opportunity Fund LLC, and (c) AB Value Partners, L.P. (collectively, the "Senior Secured Lenders"). In addition, UCC financing statement have been filed on behalf of First Franchise Capital Corporation, Santander Bank, and American Express Bank, although the Debtors represent that their obligations to these entities have been discharged. JPMorgan Chase Bank, N.A. ("JPM") has a perfected, senior security interest in cash held in two separate collateral accounts of Cosi Sandwich Bar, Inc. (x2449; x7628) (the "CSB Collateral Accounts") and in the Debtors' primary operating account (x8539). The CSB Collateral accounts collectively hold approximately \$100,000. JPM's security interest secures all liabilities due from the Debtors to JPM. Such liabilities include, but are not limited to, outstanding letters of credit issued by JPM, in an amount of approximately \$288,000, plus exposure to ACH transactions and amounts in relation to Debtors' corporate credit card program through JPM.

5. This Court has not been asked to find, and it does not find, that any security interest asserted by the Senior Secured Lenders is valid or perfected.

6. Pending a final hearing on the Cash Collateral Motion, the replacement liens and the equity in the Debtor's property, as set forth below, will adequately protect the

interests of the Senior Secured Lenders for the purposes of Bankruptcy Code §§ 361 and 363(e).

NOW THEREFORE, IT IS HEREBY ORDERED THAT:

- A. The Cash Collateral Motion is allowed on an interim basis.
- B. The Debtor is authorized to use Cash Collateral in the ordinary course of its business substantially in accordance with the budget attached hereto as **Exhibit A**.
- C. For the purposes of Bankruptcy Code §§ 361 and 363(e) and as adequate protection for the Debtor's use of Cash Collateral, the Senior Secured Lenders are hereby granted replacement liens (the "Replacement Liens") in and to all property of the kind presently securing the prepetition obligations of the Senior Secured Lenders, including any property purchased or acquired with the Cash Collateral and any proceeds thereof, but excluding any causes of action under Chapter 5 of the Bankruptcy Code or the proceeds of any claims under or actions commenced pursuant to such powers. The Replacement Liens shall only attach to and be enforceable against the same types of property, to the same extent, and in the same order of priority as existed immediately prior to the Petition Date. The Replacement Liens shall be recognized only to the extent of any post-petition diminution in value of the Secured Creditors' prepetition collateral resulting from the Debtors' use of Cash Collateral during this bankruptcy case. The adequate protection provided in this Order shall be in addition to, but without duplication of the adequate protection provided to the Secured Creditors in the "INTERIM ORDER UNDER 11 U.S.C. §§ 105(a), 361, 362(c)(2), 363(e) AND 364 AND FED. R. BANKR. P. 2002, 4001 AND 9014 (I) (A) AUTHORIZING DEBTORS TO OBTAIN POST-PETITION FINANCING AND (B) UTILIZE CASH COLLATERAL, AND (II) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES"

D. Notwithstanding anything to the contrary herein, as adequate protection for the security interest of JPM, JPM shall be entitled to maintain an administrative hold on \$658,476 of cash held in Debtors' operating account, less any amounts JPM may release from administrative hold, and on all amounts held in the CSB Collateral Accounts (collectively the "JPM Cash Collateral"). The Debtors are not authorized to use the JPM Cash Collateral pursuant to this order.

E. Nothing in this Order shall constitute a waiver by the Debtors or restrict the Debtors' right to seek the further use of Cash Collateral, or the right of the Senior Secured Lenders to challenge any such use of Cash Collateral or seek modification of this Order

F. This Order, and the Debtors' use of Cash Collateral as authorized in this Order, shall become effective immediately upon entry of this Order.

G. A final hearing on the Cash Collateral Motion shall be held on **October 20, 2016 at 2:00 p.m.**

Dated: October 5, 2016



Honorable Melvin S. Hoffman
United States Bankruptcy Judge

EXHIBIT A

Cosi, Inc.	6 Day Week Case 16-13704 Doc 83 Filed 10/05/16 Entered 10/05/16 08:53:14 Desc Main Document Page 8 of 7										9 Week Summary	10	11	12	13
13 WEEK CASH FLOW - FORECAST - 28 Store Closu	10/3/2016	10/10/2016	10/17/2016	10/24/2016	10/31/2016	11/7/2016	11/14/2016	11/21/2016	11/28/2016	Forecast	12/5/2016	12/12/2016	12/19/2016	12/26/2016	
Week Ended:	10/3/2016	10/10/2016	10/17/2016	10/24/2016	10/31/2016	11/7/2016	11/14/2016	11/21/2016	11/28/2016	Forecast	12/5/2016	12/12/2016	12/19/2016	12/26/2016	
Revenue:															
Store Revenue	874,647	1,062,763	1,119,144	1,121,194	1,103,759	1,148,820	1,114,526	1,150,921	745,502	9,441,275	1,148,477	1,149,098	1,085,876	615,039	
Franchisee Royalty Revenue	35,182	36,098	36,450	37,348	36,867	37,199	35,579	37,037	27,982	319,743	35,902	37,659	36,479	24,507	
Total Revenue	909,829	1,098,861	1,155,593	1,158,542	1,140,626	1,186,019	1,150,106	1,187,958	773,484	9,761,018	1,184,379	1,186,757	1,122,355	639,545	
Cash Receipts:															
Store Receipts	928,831	1,114,989	1,174,192	1,176,345	1,158,038	1,202,199	1,166,958	1,205,215	779,525	9,906,292	1,192,339	1,195,767	1,129,384	635,024	
Franchisee Receipts	35,182	36,098	36,450	37,348	36,867	37,199	35,579	37,037	27,982	319,743	35,902	37,659	36,479	24,507	
Total Receipts	964,013	1,151,087	1,210,642	1,213,692	1,194,905	1,239,398	1,202,538	1,242,252	807,507	10,226,035	1,228,242	1,233,426	1,165,863	659,531	
Cash Disbursements:															
Operating Disbursements															
Store Labor and Taxes	-	821,232	-	804,472	-	804,472	-	803,466	756,204	3,989,846	-	-	803,466	-	
G&A Labor and Taxes	-	121,565	-	113,325	-	113,325	-	107,491	107,491	563,197	-	-	107,491	-	
Benefits	25,400	20,000	42,400	20,000	52,400	20,000	42,400	20,000	187,200	429,800	-	-	-	-	
Total Labor, Taxes and Benefits	25,400	962,797	42,400	937,797	52,400	937,797	42,400	930,957	1,050,895	4,982,843	-	-	910,957	-	
COGS	287,404	351,177	370,291	370,986	365,075	380,352	368,726	381,064	298,297	3,173,372	380,235	380,446	359,013	263,181	
Sales Tax	17,000	17,000	400,000	17,000	15,000	15,000	15,000	278,827	408,534	1,183,361	-	-	-	-	
Rents	891,661	-	-	-	-	891,661	-	-	-	1,783,322	891,661	-	-	-	
Repairs and Maintenance	46,852	46,852	46,852	46,852	46,852	46,852	46,852	46,852	46,852	421,667	46,852	46,852	46,852	46,852	
Utilities	35,550	35,550	53,674	35,550	35,550	35,550	53,674	35,550	35,550	356,202	35,550	35,550	53,674	35,550	
General & Administrative	77,020	64,320	98,179	256,580	288,320	195,695	68,420	160,679	88,320	1,297,533	112,968	461,643	116,679	184,552	
Total Operating Disbursements	1,380,887	1,477,696	1,011,396	1,664,766	803,198	2,502,907	595,072	1,833,930	1,928,448	13,198,300	1,467,267	924,491	1,487,175	530,135	
Net Operating Cash	(416,873)	(326,609)	199,245	(451,073)	391,707	(1,263,509)	607,466	(591,678)	(1,120,941)	(2,972,265)	(239,025)	308,935	(321,312)	129,396	
Non-operating Disbursements															
DIP Interest and Fees	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Key Employee Incentive Plan (KEIP)	-	-	-	77,400	-	-	-	77,400	-	154,800	-	-	103,200	-	
Critical Vendor Payments/Deposits	275,000	-	-	-	-	-	-	-	-	275,000	-	-	-	-	
Unsecured Creditor Committee Legal Fees	-	-	-	25,000	-	-	-	25,000	-	50,000	-	-	-	25,000	
DIP Lender Legal Fees	-	-	-	5,000	-	-	-	-	-	5,000	-	-	-	-	
Company Legal Fees	-	-	-	100,000	-	-	-	100,000	-	200,000	-	-	-	100,000	
TOG Professional Fees	-	-	-	52,000	-	-	-	52,000	13,000	117,000	13,000	13,000	13,000	13,000	
DIP CRO Professional Fees	-	13,800	13,800	19,800	13,800	13,800	13,800	19,800	13,800	122,400	13,800	13,800	13,800	266,800	
US Trustee Fees	-	-	-	-	-	-	-	-	20,000	20,000	-	-	-	-	
Other Restructuring Costs	56,000	-	-	-	-	-	-	-	-	56,000	-	-	-	-	
Lease Assumption Cures	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Executory Contract Cures	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Total Non-operating Disbursements	331,000	13,800	13,800	279,200	13,800	13,800	13,800	274,200	46,800	1,000,200	26,800	26,800	130,000	404,800	
Total Disbursements	1,711,887	1,491,496	1,025,196	1,943,966	816,998	2,516,707	608,872	2,108,130	1,975,248	14,198,500	1,494,067	951,291	1,617,175	934,935	
Cash Receipts less total expenditures	(747,873)	(340,409)	185,445	(730,273)	377,907	(1,277,309)	593,666	(865,878)	(1,167,741)	(3,972,465)	(265,825)	282,135	(451,312)	(275,404)	
Beginning Cash Balances	950,000	1,000,000	1,000,000	1,185,445	1,000,000	1,377,907	1,000,000	1,593,666	1,000,000	950,000	1,000,000	1,000,000	1,282,135	1,000,000	
Net Weekly Cash Activity (from above)	(747,873)	(340,409)	185,445	(730,273)	377,907	(1,277,309)	593,666	(865,878)	(1,167,741)	(3,972,465)	(265,825)	282,135	(451,312)	(275,404)	
Advance from DIP Facility	797,873	340,409	-	544,828	-	899,402	-	272,212	1,167,741	4,022,465	265,825	-	169,177	275,404	
Ending Cash Balances	1,000,000	1,000,000	1,185,445	1,000,000	1,377,907	1,000,000	1,593,666	1,000,000	1,000,000	1,000,000	1,000,000	1,282,135	1,000,000	1,000,000	
Total Cumulative Change in Cash	50,000	50,000	235,445	50,000	427,907	50,000	643,666	50,000	50,000	50,000	50,000	332,135	50,000	50,000	
DIP Facility, Beginning Balance	-	797,873	1,138,283	1,138,283	1,683,111	1,683,111	2,582,512	2,582,512	2,854,724	-	4,022,465	4,288,290	4,288,290	4,457,467	
Advance	797,873	340,409	-	544,828	-	899,402	-	272,212	1,167,741	4,022,465	265,825	-	169,177	275,404	
DIP Facility, Ending Balance	797,873	1,138,283	1,138,283	1,683,111	1,683,111	2,582,512	2,582,512	2,854,724	4,022,465	4,022,465	4,288,290	4,288,290	4,457,467	4,732,872	
Restricted Cash from the Sale of Gift Cards	-	1,096	1,099	1,099	1,099	5,064	4,296	4,322	4,322	22,398	17,660	14,884	14,884	14,865	

GENERAL

This plan assumes the closing of 29 stores just before the petition date. It does not assume the payments for curing executory contracts or leases which amount to an estimated \$1.2m (see U and V below). It does contemplate a deposit of \$250k paid to the DIP lender pre-bankruptcy (amount is reflected in the opening cash balance). Please note there are three possible events that could give up side to this plan. The first is a lease breakup payment from MIT in the amount of \$600k. The second is an initial franchise fee due from Purdue for \$35k. The third is a premium reimbursement from Hays Insurance for \$37k. None of these have been included in the plan. The plan assumes that the bankruptcy will end on the 28th of November. If that date moves, adjustments to the plan would be necessary to be sure that all payroll, trust fund taxes and other fiduciary obligations incurred in the bankruptcy are paid in full.

A	Store Revenue	Based 2015 store sales for the same weeks reduced by a factor of 30% and then further reduced by a blended comp base -8% for week 1, -10% for weeks 2 - 5 and trending back to -8% over the next 4 weeks. The 29% represents the average sales from the exiting stores over the last month in comparison to the total store sales. An additional adjustment was made to reduce sales of gift cards by an additional 30% assuming purchases of gift cards will be hurt by the publicity of the bankruptcy.
B	Franchisee Royalty Revenue	Calculated as 5% of franchisee revenue. Franchisee revenue based year over year same week franchisee store revenue reduced by -5% store comps. The -5% store comp is a bit more conservative than the recent trend of -3%. No one-time development fees or initial franchise fees have been included (see general note above).
C	Store Receipts	Store receipts = store sales grossed up for sales tax (7%) less cc fees (2%). The net effect of segregating gift card sales has been considered as well. A separate line tracks the restricted cash from gift card sales (see Z below).
D	Franchisee Receipts	Franchise receipts = franchisee royalty fees. Note that the marketing funding fees (1% of franchisee sales) have been removed from this model as the company anticipates franchisee push back in the absence of quantifiable ongoing marketing initiatives (spending).
E	Store Labor and Taxes	Based on recent historical labor by store for ongoing stores. Assumes a vast majority of exiting store employees are laid off prior to filing. Employees from exiting stores that remain for a period of time are there to assist in the store closing or have transferred to other stores..
F	G&A Labor and Taxes	Includes all of corporate salaries and operation management salaries (no store managers). Reductions to head count made on an employee by employee basis. Per the operations manager, the is operating throughout this period with one less area manager than is optimal.
G	Benefits	Includes all benefits (medical, vision, dental, life, etc.). The Company is self insured for medical. A motion will be filed to allow prepetition claims to be covered. Therefore in the course of this budget, medical claim reimburse is not expected to go down. As the employees from the exiting stores represent less than 10% of the total employees on the company medical plan, the future savings is expected to be approximately \$2k per week.
H	COGS	Includes COGS and Paper. Based on average actual cash paid for COGS from P4 - P9 2016 reduced by 29% for store closures (29% based on Sales reduction excluding -8 comp base). This was further reduced by a factor of 2.25% to account for lost volume discounts, etc.
I	Sales Tax	Trust Fund Tax. The first month represents payments of sales tax for September for all 72 stores. The following months represents sales tax on the 44 remaining stores. Note that the company follows a 4-4-5 month in the time period to which the sales tax being paid relates.
J	Rents	Assumes paying all rents on time for 44 locations. It does not contemplate curing the arrearage on these stores (see U below).
K	Repairs and Maintenance	This line reflects payments for our standard R&M contracts for pests, oven cleanings, maintenance, as well as payments to vendors for general R&M. It was based on an average weekly cash outlay from P4-P9 2016 reduced by 30% for store closures. This amounts to approximately \$40k per week. We have also included approximately \$8k in what we would traditionally be called capex using the same theory (recent historical outlay less 30%).
L	Utilities	Utilities were based on average weekly cash outlay from P3-P6 2016 for seasonal reasons reduced by 30% store closures.
M	General & Administrative	Used specific identification. Includes costs for IT systems (wk. 13 \$45k due for Ultiprot), accounting fees (wk. 5 \$75k), legal, SEC costs (wk. 5 \$100k legal SEC / wk. 6 \$65k Nasdaq), and insurance (WK 4 \$65k / WK 11 renewal down payment \$300k).
N	DIP Interest and Fees	DIP Lender to provide cash requirements of the financing arrangement.
O	Key Employee Retention Plan (KERP)	General estimate of payout under key employee retention plan. The plan assumes the payout of 30% in 30 days, 30% in 60 days and 40% in 90 days and amounts to \$258k in total which was agreed to by the DIP lender.
P	Critical Vendor Payments/Deposits	General estimate of possible key vendor and utility deposits/prepayments.
Q	Unsecured Creditor Committee Legal Fees	Estimate of legal fees for the unsecured creditors committee.
R	Company Legal Fees	Legal fees for the company's bankruptcy counsel - Mirick O'Connell.
S	DIP Lender Legal Fees	Legal Fees incurred by the DIP lender related to the DIP financing.
T	Professional Fees	Professional fees for the company's interim CFO - The O'Connor Group.
U	DIP CRO Professional Fees	DIP Lenders Professional Fees include \$13.8k per week in fees. \$6k per month per diem in October and November and \$3k in December. A maximum of \$250k in success fees paid in December.
V	US Trustee Fees	Monthly reporting fees for payable to the US Trustee's office. It is based on fee structure that is outlined in the Operating Guidelines which is based off of total disbursements.
W	Other Restructuring Costs	These costs relate to the cost of the store closing estimated at \$2k per store.
X	Lease Assumption Cures	Estimated at \$900k based on the expected outstanding rent on the petition date for all stores leases that will be assumed. Subject to discussion and negotiation with DIP Lender.
Y	Executory Contract Cures	Estimated at \$470k based on the estimated outstanding balance on the petition date of all other executory contracts that are expected to be assumed. Subject to discussion and negotiation with DIP Lender.
Z	Restricted Cash from Gift Card Sales	The net cash from gift card sales has been segregated from operating cash. Sales were based off last year sales for the same months, reduced by the same negative year over year sales comps as regular stores' sales and then further reduced by 30% to reflect consumers reluctance to buy gift cards when a company is in bankruptcy. Redemptions are calculated by taking 70% of each weeks sales with a six week lag in use.